INDEX

	Page
Opinion below	1
Jurisdiction	1
Questions presented	1
Statement	2
Argument	7
Conclusion	20

CITATIONS

Cases:

Carbo v. *United States*, 314 F. 2d 718, certiorari denied, 377 U.S. 953 — 10

Grunewald v. *United States*, 353 U.S. 391 — 13

Kolod v. *United States*, No. 133 this Term, pending on the government's motion to modify — 19

Kolod v. *United States*, 390 U.S. 136 — 19

Krulewitch v. *United States*, 336 U.S. 440 — 13

Lutwak v. *United States*, 344 U.S. 604 — 13

McCray v. *Illinois*, 385 U.S. 300 — 18

People v. *Buchalter*, 289 N.Y. 181, 45 N.E. 2d 225 — 11

Roviaro v. *United States*, 353 U.S. 53 — 17

Rugendorf v. *United States*, 376 U.S. 528 — 18

State v. *Kwan*, 174 Wash. 528, 25 P. 2d 104 — 11

United States v. *Scandifia*, 390 F. 2d 244, certiorari pending, No. 1290, this Term — 10

Miscellaneous:

3 Wigmore, *Evidence* (3d ed., 1940) §1044 — 10

308-914—68——1

In the Supreme Court of the United States

OCTOBER TERM, 1967

No. 1420

JOHN FRANZESE, A/K/A/ "SONNY", ET AL., PETITIONERS

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

OPINION BELOW

The opinion of the court of appeals (Pet. App. A) is not yet reported.

JURISDICTION

The judgment of the court of appeals was entered on March 25, 1968. On April 19, 1968, Mr. Justice Harlan extended the time for filing a petition for a writ of certiorari to May 24, 1968, and on May 10, 1968, the petition was filed. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

QUESTIONS PRESENTED

1. Whether, in the circumstances of this case, redirect examination of government witnesses who had

been impeached by prior inconsistent statements was proper to permit them to explain that their failure to inculpate petitioners in the prior statements was due to fear.

2. Whether there was a prejudicial variance between the proof and the indictment.

3. Whether the evidence showed an improper "deal" with certain government witnesses, necessitating reversal of the convictions.

4. Whether the trial court's refusal to require disclosure of an informant's identity was justified on the facts of this case.

STATEMENT

After a jury trial in the United States District Court for the Eastern District of New York, petitioners were convicted on various counts charging conspiracy to rob federally insured banks, receiving the proceeds of bank robberies, and aiding and abetting the commission of bank robberies in which lives were placed in jeopardy. See Pet. App. A, p. A3, fn. 2. Petitioner Franzese was sentenced to a total of fifty years' imprisonment and was fined $20,000; petitioners Florio and Potere were each sentenced to a total of fifteen years' imprisonment; petitioners Matera and Crabbe were each sentenced to five-year prison terms. The court of appeals affirmed (Pet. App. A).

As the court of appeals indicated, the government's evidence, the sufficiency of which is not challenged, "rested almost entirely on the testimony of four confessed participants—Smith, Parks, Cordero and

Zaher—who cast [petitioners] in the role of behind-the-scenes operators of a nationwide bank robbery business" (Pet. App. A, pp. A3–A4). This testimony, which the court found to be "exceedingly detailed and circumstantial—indeed therein lay its strength" (Pet. App. A, p. A5), showed the following.

On July 19, 1965, the four witnesses, who were dissatisfied with their leadership by one Polisi, were summoned to a meeting [1] at the Aqueduct Motel Inn in Queens, New York, which was owned and operated by Polisi (R. 73–79, 1458, 1783–1784, 2371–2372).[2] Present were Polisi and all petitioners except Potere. The four stated that they were dissatisfied with the way Polisi had handled two prior robberies. Franzese announced that he was taking over the operation and that work orders would be issued by the others in the room. He indicated the split would be fifty-fifty (R. 2372–2373, 2571). Petitioner Matera added that the arrangements included money for bail and for lawyers in the event of arrest, as well as money for the robbers' families if they had to serve prison terms. He warned that "ratting on anybody is out of the question * * * because we will get you" (R. 83–84, 2373–2374, 2572). Franzese then confirmed the understanding regarding money in the event of arrest or jail sentence and said he would see to it that the robbers' money

[1] We have simplified the account of this meeting (as did the court of appeals) to reflect the situation as though all four witnesses were always in the room. In fact, no more than two of the four robbers conferred with the others at any one time.

[2] "R." refers to the record of proceedings in the district court, on file with the Clerk of this Court.

was invested in legitimate business. He described the extent of his services as including the theft of cars to be used in the robberies (R. 1458–1460, 1785–1786). Petitioner Florio told Smith and Parks that Potere also was involved in the scheme (R. 2376–2377, 2573).

A few days later, Cordero met with petitioners Florio, Franzese and Potere at Potere's apartment (R. 1793–1795). Franzese announced that he had the plans for five banks. He reiterated that the split would be fifty-fifty (*i.e.*, fifty percent to the robbers and fifty percent to himself and the others) and that there would be money for bail, lawyers and family in case the robbers were caught. (R. 1796–1797). Later that night, pursuant to Franzese's direction, the plans were shown to Parks, Smith, and Polisi at the Aqueduct Motor Inn.[3] The banks were reconnoitered the following morning and subsequently the bank-robber trio (Parks, Smith and Cordero) were introduced to the get-away driver, Anne Messineo (R. 97–106, 1800–1810, 2378–2386, 2578–2581). On July 30, 1965, the trio (with Anne Messineo acting as driver) robbed the Queens County Federal Savings and Loan Association of $12,000 using guns supplied by Florio and Polisi (R. 109–110, 119–122, 1810–1812, 2389, 2586). On August 13, 1965, the trio, again using guns and with Anne Messineo as driver of the get-away car, robbed the United States Savings and Loan Association in Oceanside, Long Island of $16,400 (R. 131–135, 1864–1869,

[3] Zaher, in the interim, had left the area, having been advised by the other three robbers that Polisi wanted him killed (R. 1541–1543, 1788–1792).

2405–2409, 2596–2598).[4] On August 31, 1965, the trio committed armed robbery of the Holyoke National Bank in Chicopee, Massachusetts, netting $17,000 (R. 153–156, 475–496, 1894–1898, 2174–2180, 2469–2472, 2630–2634).

Early in September 1965, Franzese directed the trio to rob banks in Denver and Salt Lake City. The Denver bank was to be robbed on Friday, September 10. Franzese instructed Smith to take along his girl friend, Carol Scalzo,[5] and Cordero to take his wife. Petitioner Crabbe asked to accompany the group, but Franzese refused, stating that Crabbe was needed at home (R. 164, 1901–1903). The group arrived in Denver a day behind schedule. On Saturday, September 11, 1965, the trio robbed the Denver bank of $300. Two days later they robbed the Salt Lake City bank of $33,000 and some travelers checks (R. 161–168, 1905–1909, 2180–2200, 2537–2541). After returning to New York the trio, at a meeting with petitioners Franzese, Florio, Crabbe and Matera, offered Franzese $6,000 plus the travelers checks as his share. Franzese accepted but warned: "From now on it is going to be fifty-fifty" (R. 171–178, 1910–1915, 2542–2546).

There was talk later of "work" for the trio in California and of a planned armored truck robbery (R. 1915–1916, 2547). During the last week in September, banks in Brooklyn and Long Island were surveyed (R. 2548–2555). On September 30, 1965, Parks

[4] Shortly following each robbery, the guns were returned, and the money divided, at the Aqueduct Motor Inn.

[5] Miss Scalzo had accompanied the trio to Massachusetts and had aided in the Chicopee robbery, as had Polisi's son.

and Smith were arrested. Cordero was apprehended on October 1, 1965. Zaher, who had returned, was arrested on October 8, 1965 (R. 284–285, 1462–1464, 1935–1937).

After the arrest of Parks, Zaher took Parks' sister to see Polisi with regard to bail arrangements. Polisi said he was not making such arrangements. He gave Zaher $200 and told him to "stay away" (R. 1464–1465, 1473). The lawyers who represented Parks and Cordero following their arrest testified that they received approximately $1,100 from Potere for Parks and $960 from Potere for Cordero, to be used primarily for attorneys' fees and bail[6] (R. 2645–2648, 2701–2718, 2782–2786, 2796–2797; see R. 3133–3135).

No defense testimony was offered on behalf of any petitioner other than Matera, whose wife and others gave alibi evidence that he was at a resort in the Poconos from July 17 to July 24, 1965. See Pet. App. A, p. A8. Petitioners' defense was chiefly aimed at attacking the credibility of the four principal government witnesses, Parks, Smith, Cordero and Zaher. To this end, petitioners cross-examined each of these witnesses with respect to prior inconsistent statements which failed to mention petitioners' role in the bank robbery organization, with respect to their prior criminal records, and with respect to letters and other facts allegedly showing an improper inducement for their testimony.

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[6] $500 of Cordero's money was for his wife.

ARGUMENT

1. Petitioners contend that it was error in the circumstances of this case to permit the prosecution to "rehabilitate" the government's witnesses through redirect examination enabling the witnesses to explain the reason for their prior inconsistent statements. In considering this claim, it will suffice to recount the facts with respect to the government's lead witness, Smith, since the testimony of the other witnesses involved similar procedures and statements.

In statements to the F.B.I. on October 14, 1965, and in testimony at the trial of Polisi and his son in January 1966, Smith had inculpated Polisi and had thrust on him the role of leader, without mentioning the participation of petitioners.[7] In March 1966, Smith implicated petitioners before the federal grand jury which returned the present indictment. At that time he was asked why he had not previously disclosed information of petitioners' participation in the scheme. He answered (Pet. App. A, p. A9):

> "Because, as far as I was concerned, I was ready to go and take my just punishment. They would look out for my family and put up the bail money, and try and get me back out. And they didn't do it. And I felt I didn't owe them nothing no more."

Petitioners' counsel were furnished Smith's previous statements before their cross-examination. They cross-

[7] As the court of appeals pointed out, Polisi had in fact been the leader of the bank robbery enterprise prior to the July 19, 1965, meeting at which Franzese took over. Two of the three robberies for which Polisi was tried occurred in the period of his leadership (Pet. App. A, p. A5, fn. 4).

examined him extensively concerning his prior failure to allude to petitioners' involvement in the crimes.

Following Smith's cross-examination, the prosecutor advised the court that he proposed to show on redirect examination that Smith's silence as to petitioners was due to fear. After weekend research, the trial judge announced his tentative conclusion that a "witness may describe what his fears are and what they are based on" even if they "happen to point to a crime." However, he indicated that he would "exclude any other matter that * * * will lead the jury away from these issues and in effect decide the character or other crimes of these defendants" (R. 810). After further discussion, it was decided to hold a preliminary hearing outside the presence of the jury at which Smith would explain the basis of his fears. After listening to Smith's testimony, the trial judge imposed several limitations designed to protect petitioners from undue prejudice.[8] Prior to Smith's redirect examination, the court instructed the jury as to the bearing of the evidence it was about to hear (R. 1036–1039). The court charged in part:

> Now, there is some testimony, as I indicated to you, that does not name these defendants as participants in the crime. We call that impeaching testimony. * * * I charge you that you may accept that testimony that does not name

[8] The court ruled that it would not allow Smith to mention that Franzese was an underboss in organized crime or that Smith heard that Franzese was involved in any killings. The words "organized crime" were not to be used, nor any familiar underworld names (R. 930–932). See, also, as to Cordero, Pet. App. A, p. A15, fn. 9.

> these defendants as the believable testimony, and reject the testimony he gave before you. But it is of the utmost importance to understand that the issue upon which the Government is offering testimony is why this witness said he did not name these defendants on the prior occasions. This is collateral matter. We are not interested in whether what he says he knew or what he says he heard as the basis for the reasons for not disclosing the names is true or not. The real issue is did this witness believe what he heard and what he understood generally and was it for that reason that he failed to name these defendants at the previous times * * *

Thereafter Smith testified that, when he gave statements to the F.B.I. in October 1965 and evidence at the Polisi trial in January 1966, he feared for his life if he were to implicate petitioners. Smith's testimony (as well as that of the other members of the bank robber quartet who were permitted, under similar procedures, to explain the reasons for their prior failure to inculpate petitioners) is set forth in detail in the opinion of the court below, at Pet. App. A, pp. A10–A12.

During Smith's recross examination, petitioners' counsel for the first time brought up the issue of the inconsistency between his fear testimony at trial and his grand jury testimony of March 1966 where he gave a reason other than fear as the basis for his prior failure to implicate petitioners (see *supra.*, p. 7). On re-direct examination, the prosecutor asked Smith whether he recalled a conversation with him "relative to fear" just before Smith gave his

grand jury testimony (R. 1406–1707). Petitioners objected and the jury was excused. Asked to submit an offer of proof, the prosecutor stated (R. 1407–1408):

> What this is, your Honor, prior to these individuals—I make it a practice not only testifying before the grand jury but testifying in Federal Court, this statement that fear is a very critical thing, and I had a conversation with each of these individuals before they went into that grand jury and said "Don't mention this organized crime in there; don't mention this killing business; don't mention the fear element and the same when these people have been put on the stand. That is the reason for this.

After further colloquy, the court ruled that Smith could answer the question. The jury was recalled and Smith testified that he did not remember any such conversation (R. 1417–1418).

Petitioners do not challenge the general principle that a witness may always seek to explain away a previous inconsistent statement by testifying that it was impelled by fear. 3 Wigmore, *Evidence* (3d ed., 1940), § 1044; *Carbo* v. *United States*, 314 F. 2d 718, 743–744 (C.A. 9), certiorari denied, 377 U.S. 953; *United States* v. *Scandifia*, 390 F. 2d 244, 250–251 (C.A. 2), certiorari pending, No. 1290, this Term. They argue, however, that the principle should be limited to situations where "some objective verification for * * * the claimed mental state" (Pet. 23) is shown and contend that they were prejudiced in this case because the trial judge permitted Smith and the other witnesses to testify as to their fear, although there was no proof

that any of the alleged incidents giving rise to the fear had occurred. Apparently, petitioners' argument goes beyond a mere requirement that there be admissible evidence as to any underlying incident, for Smith had already testified as to Matera's threat at the organizational meeting. In any event, the contention is inconsistent with the purpose of the rule allowing the testimony as to fear. As the trial judge charged, the pertinent consideration is whether the witness was afraid when he gave the previous, inconsistent statement. A requirement that a witness could testify about his fear only if there were independent evidence of its basis in fact would serve no valid purpose and, indeed, could be very prejudicial to the defendant in the case of a defense witness. No case of which we are aware supports the proposition urged by petitioners. See, *e.g.*, *People* v. *Buchalter*, 289 N.Y. 181, 202, 45 N.E. 2d 225, 235–236 (Ct. App. N.Y.); *State* v. *Kwan*, 174 Wash. 528, 534, 25 P. 2d 104, 106–107 (Sup. Ct. Wash.). Of course, to the extent that a witness' explanation of the grounds for his fear seems fanciful, the jury is less likely to credit the genuineness of the fear. But that is a matter of credibility which a jury is competent to determine.

Petitioners also contend (Pet. 19–20) that the prosecutor deliberately misled them into undertaking a cross-examination of Smith based upon his prior inconsistent statements by telling Smith not to disclose before the grand jury that fear was the reason for his prior silence respecting petitioners. They claim that, had they been aware of a foreseeable risk of rehabilitation of Smith in the manner which occurred,

they would have confined themselves to impugning his motives in testifying for the government (Pet. 21). The court of appeals found (Pet. App. A, p. A13) that this claim was not credible given the strength of the government's case and the fact that petitioners utilized the same "tactic on Cordero and Parks, who had made no statement like Smith's before the grand jury, after experience with Smith revealed the riposte this would almost certainly attract."

In any event, there was no misconduct by the prosecutor in this case. When the prosecutor told the government's witnesses prior to their grand jury testimony that they should not mention "organized crime," "this killing business," or the "fear element" (see *supra*, p. 10), he obviously was trying to keep prejudicial testimony from coming before the grand jury.[9]

2. The indictment charged a conspiracy that operated between July 15, 1965, and September 30, 1965, "both dates being approximate." Petitioners contend that evidence as to events post-dating September 30, 1965, was improperly received and constituted a prejudicial variance from the indictment. The challenged evidence consisted of testimony as to a $50 payment from Potere to Smith, the meeting between Polisi and Zaher at which Polisi gave Zaher $200 and told him to "stay away," and communications between the lawyers for Parks and Cordero and Potere regarding money which Potere provided, primarily for bail and

[9] Petitioners conceded in the district court that the prosecutor's advice was not designedly wrong (R. 1409–1411)—a position they have since abandoned.

attorneys' fees. See *supra*, p. 6. This testimony related to events which occurred in October 1965, with the exception of certain correspondence between Parks' lawyer and Potere in November and December which the court instructed was admissible only as to Potere (see Pet. App. A, p. A20, fn. 13).

Petitioners argue on the basis of such cases as *Grunewald* v. *United States*, 353 U.S. 391; *Lutwak* v. *United States*, 344 U.S. 604; and *Krulewitch* v. *United States*, 336 U.S. 440, that the evidence showing payments of money for bail and attorney's fees, etc., postdating September 30, 1965, should not have been admitted because it did not relate to the bank robbery conspiracy charged in the indictment. The proof showed clearly, however, that the agreement to provide the robbers and their families with money in case of capture and incarceration was an integral part of the bank robbery scheme from its inception. The situation is thus significantly different from that in the cases cited above, where a theory of an implied conspiracy to conceal a completed crime was relied upon in an effort to extend the conspiracy concept to later acts.[10]

3. Petitioners invoke the supervisory power of this Court to correct alleged abuses of prosecutorial practices regarding arrangements and understandings with the four bank robber witnesses (Pet. 16–18, 28–30). The records shows, however, that no improper arrange-

[10] The trial court charged the jury not to consider against all petitioners acts or declarations of any one of them after the robbers' arrests, unless it found the conspiracy continued beyond those dates (R. 4142–4143).

ments or understandings with the witnesses were made. Petitioners refer to letters written by certain of the witnesses to the United States Attorney following their arrest (see R. 435–437, 440, 443–444, 452–453, 519–522, 2116–2117, 2984–2989) which demonstrate that some of the witnesses attempted to strike bargains with the prosecutor to have pending charges against them dismissed, or to receive assurances of non-prison sentences, in consideration for their testimony. In no case, however, was such a bargain concluded. Smith testified that the prosecutor advised him, in reply to one of his letters, that he could not comply with Smith's request (R. 452–453). The prosecutor represented, as to Parks, that he had never sought to get charges dropped (see R. 2984–2997). The extent of the government's agreement with any witness in this case was stated by the prosecutor in closing argument (R. 4035):

> Mr. Brown said these witnesses in the event that these five defendants are convicted have a better claim on the government, and I say to you the Government made an agreement with these witnesses if they testified and cooperated with the Government that their testimony would be made known or their cooperation would be made known to a sentencing judge, and that will happen, hell or highwater.[11]

[11] The prosecutor's remarks were occasioned by a previous statement by counsel for petitioners, which the court found to have no basis in the record, that "as they [the witnesses] reason it * * * it is far more important, more valuable to them that these people [petitioners] be convicted, that John Matera be convicted, than that he be acquitted, because if he is convicted they have greater claim for preference, for consideration when

There was no impropriety in that understanding. The jury could (and presumably did) determine for itself its effect, if any, on the credibility of the government's witnesses.

Petitioners also allege that the existence of an improper "bargain" (Pet. 29) between the government and the bank robber witnesses is revealed by the return to certain of the witnesses of properties seized from them after their apprehension. Petitioners point particularly to the return to Mrs. Cordero of a suitcase containing approximately $10,000 which had been seized at Cordero's house at the time of his arrest. Cordero initially told the F.B.I. that the money belonged to his wife (R. 1963). At arraignment, however, he stated that all of it was the proceeds of bank robberies (R. 1976). Mrs. Cordero, prior to trial, filed a motion for the return of the money, stating in an affidavit that the "monies are not the fruits of a robbery and belong to deponent who requires this cash immediately for support of her family" (R. 4581–4583). The prosecutor submitted an affidavit stating that, except for $200 in bills which were identified as coming from the Salt Lake City robbery, "the government has no evidence to show the remaining monies are not those of the aforesaid Eleanor Cordero, and has no other claims for this money from any other party" (R. 2072). After considering the affidavits, the trial judge ordered

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they come up to be sentenced for in one case seven bank robberies" (R. 3851–3852). In this context the court found the prosecutor's comments not prejudicial (see R. 4037–4042, 4049–4051).

the money, apart from the $200, returned (see R. 2070–2071). At trial Cordero testified that "close to $2,000" of the money in the suitcase came from bank robberies (R. 2102).

As the court of appeals noted (Pet. App. A, p. A19), the government "submitted the issue to the trial judge." The problem of identifying unmarked money as the fruits of a particular crime is always difficult. Considering Cordero's conflicting statements, both given before trial, the government's decision not to press the issue, while it may have been "complaisant" (Pet. App. A, p. A19), hardly shows that the government intended the return of the money to be a quid pro quo for Cordero's favorable testimony. The jury was well aware of the above facts, which were brought out on cross-examination of Cordero and alluded to in the court's charge (R. 4102–4104), and could determine for itself the effect on Cordero's credibility.

Petitioners' similar reliance on the return of automobiles to Smith and Parks is without foundation. There is no evidence in the record that either car had been used in the robberies or had been purchased with the proceeds of a particular crime. The government cannot oppose a particular demand for return of property on the ground that a defendant's income comes, in general, from illegal activities.

4. During the trial, petitioners were furnished with an F.B.I. report indicating that Cordero had stated that his wife had driven one of the three "switch" cars during the Oceanside robbery on August 13, 1965. On cross-examination, Cordero denied having said

this. He testified that his wife had participated innocently in the robbery and had been in the "switch car point" area (R. 1995–1998, 2007, 2329–2330).

After the government rested, petitioners announced that they intended to call F.B.I. agent Murphy to ascertain the name of an informer referred to by Murphy in an affidavit of September 25, 1965, to obtain arrest warrants for Smith, Cordero and his wife. Murphy had there recited that a "prior reliable informant" had advised that Mrs. Cordero was "a driver of the car used in the (Oceanside) bank robbery" and that she was the owner of a 1956 Oldsmobile which was used in one of the other bank robberies (R. 3344–3351). The government objected to disclosure of the informant's name. On a voir dire examination, Murphy testified that the informant had no part in the bank robberies, and that the information that Mrs. Cordero owned a 1956 Oldsmobile used in one of the robberies was incorrect (R. 3358–3364).

Petitioners argued that disclosure of the informant's name was necessary to enable them to show that Mrs. Cordero had participated in the Oceanside robbery, and thereby to cast further doubt on Cordero's credibility by revealing a possible motive for his testimony (*i.e.*, to conceal his wife's involvement). The court ruled that the informant's testimony would be collateral and that, "in light of the record here, the danger to any informant" it had "no hesitancy in saying that the balance weighs heavily in favor of keeping the name of the informant secret" (R. 3393). This ruling was justified. This is not a case like *Roviaro* v. *United States*, 353 U.S. 53, 64, where the

informant "had helped to set up the criminal occurrence and had played a prominent part in it." See, also, *McCray* v. *Illinois,* 386 U.S. 300, 309–311. The mere fact that an informant gave information leading to an arrest does not require disclosure. See *Rugendorf* v. *United States,* 376 U.S. 528. In this case, where the danger from disclosure was evident and the possible value of disclosure minimal, the trial judge acted well within his area of discretion in declining to require disclosure.[12]

For the reasons stated, we believe that none of the questions presented by petitioners warrants review by this Court. We have the duty, however, to inform the Court that conversations of petitioner Franzese on certain dates between January 10, 1962, and April 11, 1962, were overheard by federal agents by means of an electronic device installed by trespass in Franzese's home in Long Island, New York. The conversations, which long antedated the events and the conspiracy which formed the basis of the instant charge, concerned matters totally unrelated to the present case and involved no other defendant. We intend to make a disclosure to the district court in accordance

[12] These considerations are equally relevant to petitioner's related contention that the testimony of the informer might bear on the government's failure actively to contest the return of money to Mrs. Cordero, discussed *supra.* Moreover, as the court of appeals pointed out (App. A, p. A16, fn. 10), "the information related to the Oceanside robbery whereas the suspicion as to the money was primarily as to the later Salt Lake City robbery."

with the procedure which this Court prescribes in *Kolod* v. *United States,* No. 133, this Term, pending on the government's motion to modify. In view of the utter irrelevancy of the overheard conversations, we suggest that, in order not to delay the final disposition of this case, it would be appropriate for this Court to rule on the certiorari petition on the basis of the questions raised rather than to grant the petition on the basis of the overhearing. See brief for the government in *Scandifia* v. *United States,* No. 1290, this Term, currently pending. A ruling denying certiorari would be without prejudice to further proceedings in light of this Court's decision in *Kolod* v. *United States.*[13]

[13] There is no reason to consider the question raised by petitioners (Pet. 30–32), whether the government is required to disclose instances of illegal overhearing prior to the certiorari stage, although a defendant makes no showing or allegation that any unlawful electronic surveillance has taken place. It has long been the policy of the Department of Justice to make prompt disclosure, in any appropriate court, of any disclosable material obtained by means of unlawful electronic surveillance which comes to the attention of the Department through its review procedure. See Supplemental Memorandum for the United States in *Schipani* v. *United States*, No. 504, O.T., 1966, p. 5. The instant matter was not previously disclosed because, prior to the decision of this Court in *Kolod* v. *United States*, 390 U.S. 136 (decided January 29, 1968), the government did not believe it was required to disclose overhearings, such as those here, deemed not arguably relevant to the criminal case.

CONCLUSION

For the foregoing reasons, it is respectfully submitted that the petition for a writ of certiorari should be denied.

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